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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,978	09/30/2003	Don Post	M9445-0421US1 (189228)	6281

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EXAMINER

CHOI, JACOB Y

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/675,978

Applicant(s)

POST ET AL.

Examiner

Jacob Y. Choi

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/23/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 6 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 30 September 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Baron (USPN 4,233,689).

Regarding claims 1, 10 and 16, Baron discloses a first masking layer (12), the first layer having openings (column 4, lines 50-55; "*the interior shell below the wearer's eyes where it is clearly visible*"), a second masking layer (14) positioned over the first masking layer and secured thereto in a spaced relationship (16), the second masking layer having openings for the eyes of the wearer (column 4, lines 50-55; "*the interior shell below the wearer's eyes where it is clearly visible*") which are in substantial registration with the first layer openings, a plurality of lamps (LEDs; 80) fixedly positioned between the first and second masking layers and, a controller (circuit/switches; columns 4-5, lines 60-10) for controlling the activation of the plurality of lamps (LEDs) in a desired pattern, the activation of the lamps being visible through the second masking layer which is positioned over the lamps (Figure 2).

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Note: It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claims in a pending application should be given their broadest reasonable interpretation, for example "openings". *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Regarding claim 2, Baron discloses the second masking layer comprises a translucent material (column 2, line 40).

Regarding claim 3, Baron discloses the first masking layer comprises an opaque material (column 2, lines 38-39).

Regarding claims 4, 11, Baron discloses a plurality of spacer (31) elements secured to the inside of the first masking layer for positioning the first masking layer in a space relationship with respect to the wearer's face when the device is worn.

Regarding claims 5, 12, Baron discloses a hood (26) which is secured to the peripheral edges of the second masking layer and which covers the rear of the wearer's head when the device is covering the wearer's face and eyes.

Regarding claim 7, Baron discloses the controller further comprises a power source in the form of batteries (82).

Regarding claims 8, 14, Baron discloses the controller causes a flashing pattern by the plurality of lamps upon their activation (resistors).

Regarding claims 9, 15, Baron discloses a switch for causing activation of the plurality of lamps.

***Allowable Subject Matter***

3. Claims 6 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the claim 6 recites detailed structures of a screen material positioned over the eye openings, the screen material permitting visibility therethrough while screening the wearer's face and eyes that are positioned behind the eye openings.

Because none of the references disclosed the detailed structure, nor is there any motivation to combine them, the claims are deemed patentable over the prior art of record.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Becker (USPN 5,408,393) – u-shaped helmet light

Mazzei et al. (USPN 6,490,737) – protective cushion and cooperatively engageable helmet casing for anesthetized patient

Protective face mask (USPN 6,374,424) – protective face mask

Geller (USPN 6,093,475) – bleeding costume element

Gary et al. (USPN 6,244,725) – decorative lighting display system


Palmer et al. (USPN 6,832,392) – chem-iluminescently illuminated costume safety mask

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Y. Choi whose telephone number is (571) 272-2367. The examiner can normally be reached on Monday-Friday (10:00-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JC



**JOHN ANTHONY WARD**  
**PRIMARY EXAMINER**